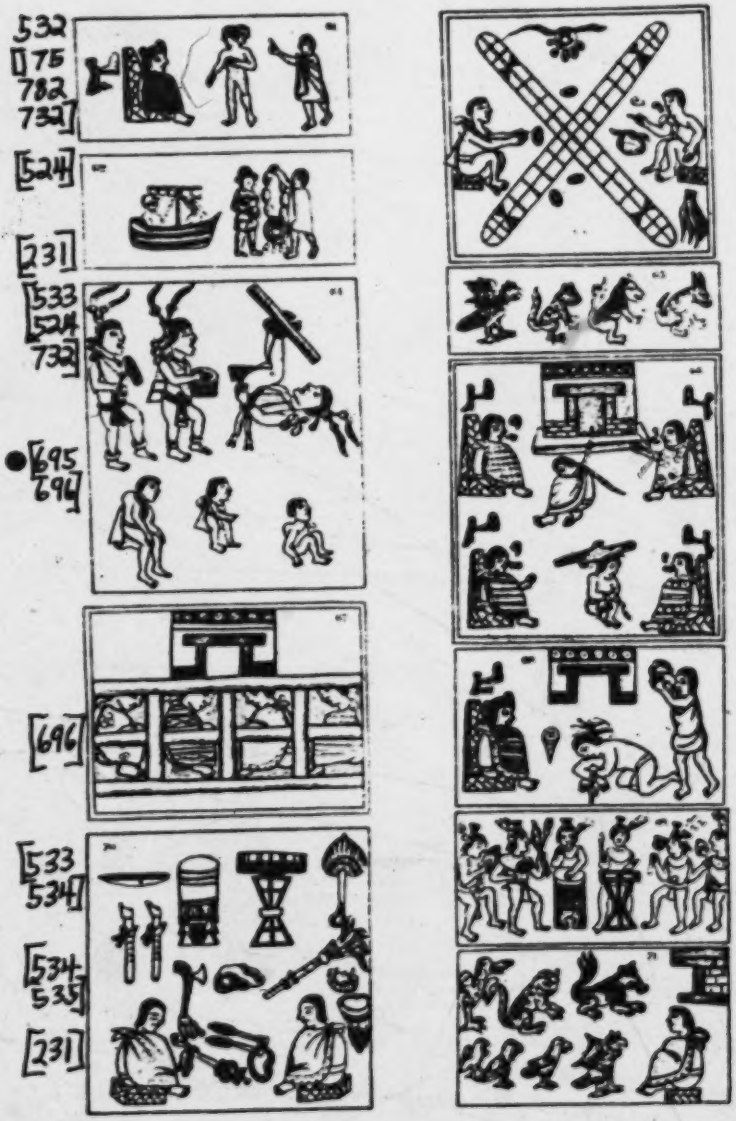

—*After Paso y Troncoso*

Omens (concluded). 61. Two-headed men (Chapter 6).

62. Spaniards landing on the coast (Chapter 7). 63. Game of *patolli* (Chapter 10). 64. Riding a dog on the soles of one's feet (Chapter 10). 65. Animals kept by the ruler (Chapter 10). 66. Judgment and punishment of malefactors—Tlacatlan (Chapter 14). 67. Same—Quauhcalco (Chapter 14). 68. Same—Tecpilcalli (Chapter 14). 69. Mexicans (Chapter 14). 70. Array and equipment for the dance (Chapter 14). 71. The ruler's animals (Chapter 14).

[p. 36(G)]

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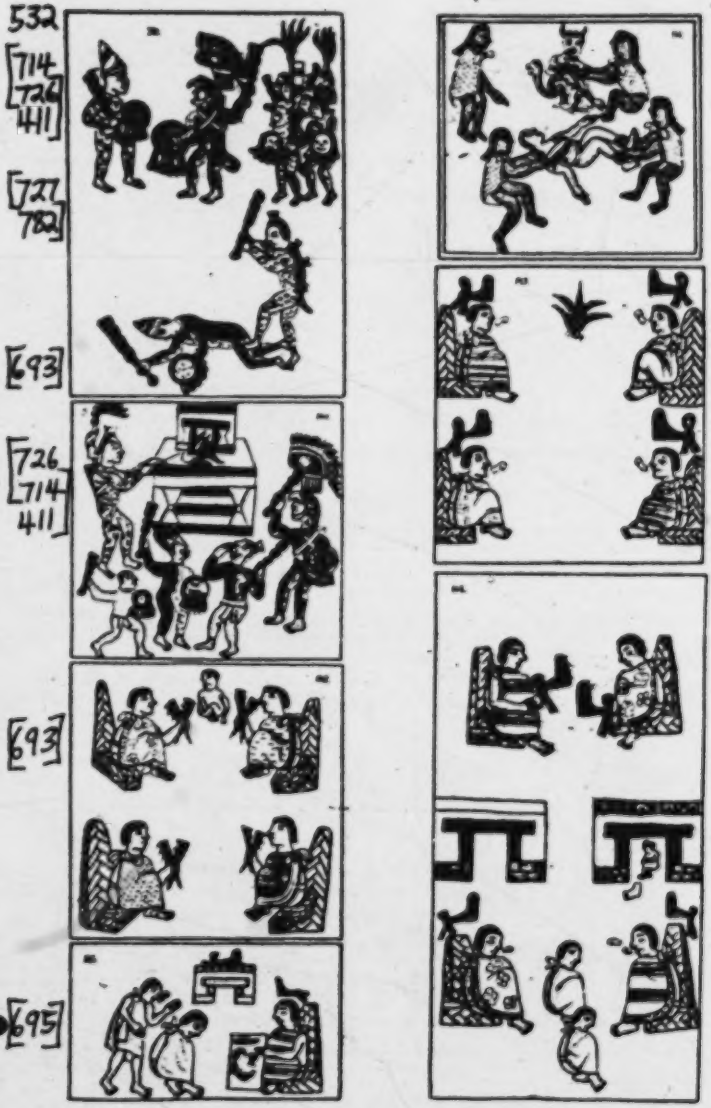

— Hist. Pan y Tranctn

79. Warriors in battle array (Chapter 17). 80. Conquest of a city (Chapter 17). 81. Sacrifice of a war captive (Chapter 17). 82-94. Judges (Chapter 17). 95. A trial (Chapter 17).

[p. 36(K)]

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Fourteenth Chapeer: here are described the palace and the houses of the lords: how were kept the houses of the lords [and] the great palace where the ruler dwelt; [how] all the lords[1] were disposed there, and there were determined the tributes or warfare; and in that place there was eating and drinking when the ruler assembled the people there.

Injc 14. capítulo vncan mjtoa in tecpancalli in tlatocacalli, ic mopia tlatocacalli, vej tecpan in vncan ca tlatoanj, ixqujch tlacat vncan tecpanoa, vncan motzontequj in tlein tequjtl, anoçe iauiotl: ioan vncan atlica tlaqualo, injc vnca tecenqujxtia tlatoanj. 000

FIRST PARAGRAPH, in which is described the court of justice, the high court, [in which], when something was harmed, when some did evil, there they passed judgment on them.

INJC CE PARRAPHO ipan mjtoa in vncā tlatoloia, in audiençia in jquac itla itlacauija, in aqujque tlatlacoa, vncan qujntlatzontequjlıaia. 692

Tlacxitlan:[2] there were the rulers, the princes, and the high judges. All the complaints of the lower classes and common folk they there heard and judged. And all death [sentences] they there meted out; either they would strangle one with a cord, or stone him to death, or slay him under wooden staves,[3] beaten; or some nobleman or judge was to be shaven [as a disgrace], or driven [out of the land], or confined, or made a commoner; or one would be seized and jailed in a wooden cage.[4] And there they delivered slaves from [undeserved] bondage.

Tlacxitlan, vncan catca tlatoque tlaçopipilti, tecutlatoque: in jxquich tlamantli in jneteilhujl cujtlapilli atlapalli maçeoalli: vnca qujcaqujlıaia, vncan qujtlatzontequjlıaia; ioan ixquich tlamantli mjqujztli vncan qujtzontequja aço aca quimecanjzque, anoço aca qujtetepachoxque, anoço aca quauhtica mjqujz qujujujtequjzque, anoço aca pi'ii, anoço tecutlato, ximaloz, totocoz, callaliloz, maceoalcuepaloz, anoço aca ilpiloz quauhcalco tlaliloz: ioan vncan qujntlatlacollaçaia, in tlatlacoti. 693 696

When] Moctezuma was lord, there was famine for two years, and many noblemen sold their young sons and maidens. When Moctezuma heard of this, he commanded that all [these] noble youths be brought together, and that their masters be told that their goods [which they had paid for them] were to be restored and returned to them. With large capes and mantles, and dried maize grains he paid the price for the noblemen. And a double forfeit he then paid in order to redeem and deliver the noblemen from bondage.

Tlatocati in motecuçuma, oxiujtl in maianaloc, in pipilti mjiequjotin, in qujnnamacaque in jntelpuchoan, ioan in jmjchpuchoan, in jcoac in oqujcac motecuçuma: tlanaoati injc nechicoloxque, in jxquichtin tlaçotipipilti, ioan notzaloxque in jntecujioboan, injc macoxque, injc cuepililoxque in jntlatquj. Veuej tilmatli, ioan quachtli, ioan tlaolli, injc qujmpatiotica pipilti, ioā oppamjxtlapan injc qujntlaxtlaujli, injc qujntlatlacollax pipilti. 731 567 643

In that place, the Tlacxitlan, they did not delay the hearings. At once, forthwith, a judgment was pro-

In oncan jn tlacxitlan amo tle vecaoaia in neteilhujlli, çan njman iciuhca motzontequja, in tlein 692 695

1. Cf. Sahagún, *op. cit.*, III, pp. 22-23: "*Este nombre, tlácatl, quiere decir, persona noble, generosa o magnífica. . . . Y los compuestos de tlácatl que se componen con nombres nacionales, significan personas nacidas, como diciendo de tlácatl, una persona hombre, o varón.*" Also cf. Leonhard Schultze Jena: *Glaubenswelt der Alt-Azteckischen Volks in Familie, Stand und Beruf, aus dem Azteckischen Urtext Bernardino de Sahagun's* (Stuttgart: W. Kohlhammer Verlag, 1952), p. 22.
2. Clark, *op. cit.*, I, p. 97, defines the term as the highest criminal court, meaning "those placed below, at the feet."
3. See Pl. 66.
4. See Pls. 67, 87.

692 nounced. And in what was there made known, the
695 lords did nothing for friendship's sake; they exacted nothing as reward; nor delayed [any case].

vncan caquitiloia tlatoque atle qujcnjuhchioaia atle tlaxtlaujltica qujxpachoaia, anoço qujuecaoaia.

SECOND PARAGRAPH, which telleth of the court, the place of discussion, where spoke the judges.

[693] Teccalli,[5] or Teccalco: there were the judges and noblemen.[6] Every day the common folk and vassals

[212] laid complaints before them. Calmly and prudently they heard the plaints of the vassals; in the picture writing which recorded the case, they studied the complaints. And when they tested their truth, they sought out and inquired of informers and witnesses who could size up the plaintiffs, [who knew] what had been stolen and what was charged.

687 And the ruler, if he knew anything ill of these judges—perhaps that they needlessly delayed the case of common folk, that they deliberated two years or even four—[that] they could not pronounce judgment because of either a bribe or kinship,—he then seized them and jailed them in wooden cages, exacted the penalty, and slew them, so that the judges might walk in dread.

[When] Moctezuma was lord, he learned many ill things of the judges Mixcoatlailotlac, Teicnotlamachti, Tlacochcalcatl, Itzlaca mixcoatlailotlac, Umaca, Toqual. Uictlolinqui, [all] of Tlatilulco—that they had unjustly discharged their office of judge. Then he seized them, jailed them in wooden cages, exacted the penalty, and slew them.

INJC VME PARRAPHO, itechpa tlatoa in audiencia in tlatoloian in vncan tlatoaia tecutlatoque.

Teccalli, teccalco, vncan catca in tecutlatoque, in tetecuti, in momuztlae imixpan moteilhujaia, cujtlapilli atlapalli maçeoalli, iujian iocuxca, in qujcaquja in jnneteilhujl maçeoalli: tlapallacujlolpan in qujpoaia, in qujttaia neteilhujlli: auh injc qujnneltiliaia, qujntemoaia, qujmjtlanja in machiceque, in tlaneltilianj, in qujmachiha moteilhujque, in tlein qujmocujcujlia, in tlein ipan moteilhuja.

Auh in tlatoanj, intla itla qujnmachili in iehoantin tecutlatoque, aço çã tlapic qujuecaoa, in jneteilhujl cujtlapilli, atlapalli, aço ie uxiujtl, anoço ie nauhxiujtl qujnemjtia in amo uel qujtzontecuj, aço çan ipampa tlaxtlaujlli, anoço hoxiolcaiotl: njman qujmjlpia, quauhcalco qujntlalia, qujtzacutiuj, qujmjctia, injc mauhca iezque tecutlatoque.

Tlatocati motecuçuma, mjiec tlamantli in qujnmachili tecutlatoque mjxcoatlailotlac teicnotlamachti, tlacochcalcatl, itztlaca mjxcoatlailotlac vmaca, toquai, victlolinquj, tlatilulco in amo melaoac qujchioaia in jntequjuh tecutlatolli: njman qujmjlpi, quauhcalco qujntlali, qujtzacutiaque, qujnmjcti.

692 THIRD PARAGRAPH, in which is described the
565 place of discussion where were the brave warriors
684 and the noblemen.

Tecpilcalli: there were [to be found] and were established the noblemen, the brave warriors,[7] the valiant men, wise in war. If the ruler knew something ill of some nobleman—although he were a great prince,[8] or brave warrior—if he had committed adultery, then he sentenced him to be stoned before the people, to die stoned.

[When] Moctezuma was lord, one who was a prince, named Uitznauatl ecamalacotl, committed

INJC EI PARRAPHO: vncan mjtoa in tlatoloian, in vncan catca in tiacaoan, ioan in pipilti.

Tecpilcalli, vncan catca, vncan tecpanoaia in pipilti, tiacahoan oqujchti, in iauc matinj, in tlatoanj intla aca itla qujmachili pilli, in manel cenca tlaçopilli tiacauh intla otetlaxin, njman qujtlatzontequjlia, injc teixpan tetepacholo tetica mjquj

motecuçuma tlatocati, ce tlacatl tlaçopilli itoca vitznauatl ecamalacotl tetlaxi in oconteixpauique ix-

5. Sahagún, in the corresponding Spanish text, refers to all of these places as "another hall"—"otra sala."

6. Manuel Orozco y Berra, in *Historia antigua y de la conquista de México* (México: Tipografía de Gonzalo A. Esteva, 1880), 1, p. 267, explains that "*En cada barrio de México había un tecalli, cierto ensanchamiento por los cuales discurrían las acequias, dando cuenta diariamente á los jueces superiores.*" Clark, *Loc. cit.*, I, p. 97) writes: "The four seated figures behind the judges, called *tecuhtli*, are young men of rank who attend the courts for instruction, so that in time they might rise to the position of judge." (See also ff. 67r and 68r of the *Mendoza Codex*.)

7. *Tiacauh, pilli, tecpilli*: cf. Sahagún, *op. cit.*, III, p. 2b; Jiménez, *op. cit.*, pp. 34, 68.

8. *Tlaçopilli*: cf. Jiménez, *op. cit.*, p. 34.

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were to remain, to make judgments, and to hear all manner of testimony.

The name of one Teccalli was Tlacxitlan. There they tried princes and great lords. At once, swiftly, they passed judgment on their complaints or wrong doing.

And the second place where justice was done was named Tecalli. There were the Mexican judges. Sagely they heard the complaints of the common folk. They defined and verified the complaint, they recorded it in paintings so that they might take it there to Tlacxitlan, where they informed the judges who were princes, so that there judgment might be pronounced.

And if something was difficult, they took it to the ruler so that he might judge it [with] those judges[6] whose names were Ciuacoatl, Tlacochcalcatl, Uitznauatlailotlac, Ticociauacatl, Pochtecatlailotlac, Ezuauacatl,[7] Mexicatl tezcacoacatl, Acatliacapanecatl, Milnauatl, Atlauhcatl, Ticociauacatl, Ciuatecpanecatl, and Tequixquinaoacatl. These same judges meditated and pondered upon, and examined, the testimony. They sought out the witnesses, those who bore testimony. Perchance [the charge] was true; or else that which the ruler had heard was false, so that, perhaps, by error[8] someone had been held in jail.

And if the ruler condemned someone to die, then his executioners slew him—the Achcacauhti,[9] the Quauhnochtli, and the Atempanecatl. Thus did these slay him: with a cord they strangled the evildoer, or they stoned him before the people, or they cut him to pieces.

THIRD PARAGRAPH, in which is described how all were to dance.

The ruler was greatly concerned with the dance, the rejoicing, in order to hearten and console all the peers, the lords, the noblemen, the brave warriors, and all the common folk and vassals.

First the ruler announced what song should be intoned. He commanded the singers to rehearse and practise the song and [to prepare] the two-toned

calli, in vncan iezque, in vncā tetlatzontequjlizque, 643
in vncan qujcaquizque in jxqujch tlamātli tlacatlatolli, 693
in centetl teccalli, itoca tlacxitlan, in vncā tetlatzontequjliaia tlaçopipilti, tlatocapipilti, çan njman içiuhca qujtzontequja inteneteilhujl, anoço tetlatlacul. 565 [344]

Auh injc vccan tecutlatoloia, itoca teccalli, vncan catca in tecutlatoque mexica: iujian iocuxca qujcaquja, in jneteilhujl cujtlapilli, atlapalli, in oqujchipauhque, in oqujiectilique neteilhujlli, tlapallacujlolpan qujtlalia, injc vmpa qujtquj tlacxitlan in jpā qujntlapoujlia in tecutlatoque in tlaçopipilti, injc vmpa motzontequj. 693 [344] 565 695 [212]

Auh intla itla oujlitica iujc qujtquj in tlatoanj injc ichoanti qujtzontequj in jntoca catca tecutlatoque. Çioacoatl tlacochcalcatl, vitznaoatlailotlac, ticociaoacatl, pochteca tlailotlac, ezoaoacatl, mexicatl tezcacoacatl, acatliacapanecatl, mjlnaoatl, atlauhcatl, ticociaoacatl, çioatecpanecatl, tequjxqujnaoacatl, iehoantin, y, in tecutlatoque qujnemjliaia, qujchiquja, qujpetlaoaia in tlacatlatolli, qujntemoaia in machicequе, in tlaneltilianj, in aço ie nelli, anoço tlatolchichioalli in caqujtilo tlatoanj, in aço can tlapic aca quauhcalco otlaliloc. 695 643

Auh intla aca qujtlatzontequjlia tlatoanj mjqujz, njman qujmjctia, in jtemjcticaoan achcacauhti, quauhnochtli, atempanecatl: injc ichoantin qujmjctia, qujmecanja in tlatlacoanj, anoço teixpan qujtetepachoa, anoço qujtetequj. 693 696

INJC EI PARRAPHO: ipan mjtoa in quenjn netotiloz. 535

In tlatoanj oc cenca qujmocujtlaujaia, in maçeoalliztli, in papaqujliztli, injc qujmellaquaoa, injc qujniollalia, in jxqujchtin tlatoque, ioan pipilti, ioan tetecuti, ioan tiacahoan: ioan in jxqujch in cujtlapilli, atlapalli, in maçeoalli: 643

achtopa qujtoaia in tlatoanj, in tlein cujcatl mecoz qujnnaoatiaia in cujcanjme: injc qujichecozque injc qujchicaozque in cujcatl, ioan teponaztli, olmaitl, 643 533 534

6. The corresponding Spanish text reads: "Y los casos, muy difficultosos, y graues, llamauan al señor: para que los sentenciasse juntamente con todos principales, muy calificados, que con el andauan, y residian."
7. After the word pochtecatlailotlac, the Real Academia de la Historia MS includes ticociauacatlailotlac; ticociauacatl appears as ejiciauacatl. The title Tlacochcalcatl is repeated in the Aztec text of the Florentine Codex.
8. Con ilopir: con is probably tzacuac (cf. ibid.).
9. Achcacauhti: cf. Sahagún, op. cit., I, pp. 166, 291, 293; II, pp. 310, 321; also Anderson and Dibble, op. cit., II, p. 180, and III, p. 53.

11:Diaz T,H-5 (1519-1520) 1910
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delighted to be here some days with us of his own free will and not by force, and that when he wished for anything he would tell them so, and that they must not excite themselves nor the City, nor were they to take it to heart, for what had happened about his being there was agreeable to his Huichilobos, and certain priests who knew had told him so, for they had spoken to the Idol about it. In this way which I have now related the capture of the Great Montezuma was effected.

There, where he remained, he had his service and his women and his baths in which he bathed himself, and twenty great chiefs always stayed in his company holding their ancient offices, as well as his councillors and captains, and he stayed there a prisoner without showing any anger at it, and Ambassadors from distant lands came there with their suites, and brought him his tribute, and he carried on his important business. I call to mind that when Great Caciques from distant lands came before him about boundaries or towns, or other business of that sort, however great a chief he might be, he took off his rich mantle and put on one of hennequen of little worth, and he had to come barefoot, and when he came to the apartments he did not pass straight in, but on one side, and when he came before the Great Montezuma he cast his eyes down to the ground, and before approaching him he made three bows and said "Lord, my Lord, my great Lord," and then he brought the suit or other difficulty about which he desired to consult him, drawn and painted on hennequen cloths, and with some very thin and delicate sticks he pointed out the origin of the suit. Two old men who were Great Caciques stood near Montezuma, and when they thoroughly understood the pleas, those judges told Montezuma the rights of the case, and with a few words he settled it, and gave judgment as to whom the lands or towns should belong. The litigants retired without making any reply

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and without turning their backs and with three obeisances they retired to the hall, and as soon as they left the presence of Montezuma they put on their rich garments and took walks through Mexico.

I will not say anything more at present about this imprisonment, and will relate how the messengers whom Montezuma sent with his sign and seal to summon the Captains who had killed our soldiers, brought them before him as prisoners, and what he said to them I do not know, but he sent them on to Cortés, so that he might do justice to them, and their confession was taken when Montezuma was not present and they confessed that what I have already stated was true, that their Prince had ordered them to wage war and to extract tribute, and that if any Teules should appear in defence of the towns, they too should be attacked or killed. When Cortés heard this confession he sent to inform Montezuma how it implicated him in the affair, and Montezuma made all the excuses he could, and our captain sent him word that he believed it [the confession] himself, but that although he [Montezuma] deserved punishment in conformity with the ordinances of our King, to the effect that any person causing others, whether guilty or innocent, to be killed, shall die for it, yet he was so fond of him and wished him so well, that even if that crime lay at his door, he, Cortés, would pay the penalty with his own life sooner than allow Montezuma's to pass away. With all this that he [Cortés] sent to tell him, he [Montezuma] felt anxious, and without any further discussion Cortés sentenced those captains to death and to be burned in front of Montezuma's palace. This sentence was promptly carried out, and, so that there could be no obstruction while they were being burned, Cortés ordered shackles to be put on Montezuma himself, and when this was done Montezuma roared [with rage], and if before this he was scared, he was then much more

16:Bandelier E-4 (no date) 1880 NU7 Aztec NU7

646 the critical period of Cortés' first stay at Tenuchtitlan, the twenty "speakers" held daily meetings at the official house.[185]

In a society based upon kin we cannot expect a clear division of the powers of government, particularly as there were no written laws,[186] and custom alone ruled. The functions of the ancient Mexican council were not properly legislative, but they were rather *directive* and *judicial* combined. One of its first duties was, however, to maintain harmony among the kins.

The twenty independent social units composing the Mexican tribe, while bound together by the necessity of mutual aid to secure territorial independence, could not be expected always to live in peace with one another. Difficulties would necessarily arise between kin and kin, and to prevent such disputes from leading to actual warfare,[187] the council as a body of *official arbitrators* was needed.

618 646 695 According to the rules of kinship, the calpulli was not only bound to avenge any wrongs suffered by one of its members, but it was also responsible for the offences committed by the kinfolk towards any outsider.[188] Hence theft committed outside of the

Durán (cap. X, p. 83. XI. pp. 107, 108, 109, XIV, pp. 117, 123. XVI, p. 132, XVIII. p. 156), etc., etc. We forbear further quotations, since they would be too numerous. All go to prove that the council was frequently called together between the times of regular meeting. Quotations from *Tezozomoc* ("*Crónica Mexicana*") are useless, since they are very numerous and agree with those of Durán in the main. The fact of irregular meetings of the council having been called during the conquest, is further proven by *Sahagun* (Lib. XII. cap. III. p. 7). and *Torquemada* (Lib. IV, cap. XIV, p. 385).

[185] *Bernal Díaz de Castillo* ("*Historia verdadera*," Vedia, Vol. II. cap. XCV, p. 95): "y siempre á la cuatina estaban en su compañia veinte grande señores y consejeros y capitanes." (Cap. XCVII, p. 99): "Ya he dicho otra vez en el capitulo que de ello habla, de la manera que entraban á negociar y el acato que el tenian, y como siempre estaban en su compañia en aquel tiempo para despachar negocios veinte hombres ancianos, que eran jueces."

[186] A number of paintings are mentioned as representing the customs and manners of the natives. Specimens of these are found in *Codex Mendoza*, Lam., 58 to 72 inclusive. But none of these contained, or could contain or express, anything like a *law*. Compare, on Mexican paintings in general and their value, "*On the Sources for aboriginal history of Spanish America*," in Vol. 27 of "*Proceedings of the American Association for the Advancement of Science*." Señor *Orozco y Berra* ("*Códice Mendozino,– Ensayo de descifracion geroglifico*," beginning in No. 3, of Vol. I, "*Anales del Museo Nacional de México*") has commenced a publication which can be expected to shed much light on such picture-leaves, and the true position which they held among the ancient Mexicans.

[187] Conflicts between the inhabitants of different "barrios" during festive turnouts and religious gatherings could not always be prevented.

[188] *Morgan* ("*Ancient Society*," pp. 76 and 77). *Davila-Padilla* ("*Historia de la Fundacion y Discurso de la Provincia de Santiago de México*," Lib. I, cap. XXVI, p. 83). The custom is general among other tribes and Mr. Morgan has adverted to it among the Maya of Yucatan and the Peruvians. It would be unnecessary display to produce further evidence: the remarkably clear statements of Mr. Morgan fully "cover the case."

16:Bandelier E-4 (no date)1880 NU7 Aztec NU7

calpulli, and especially the slaying, wilful or accidental, of members of one kin by those of another, became the cause of a claim by the offended calpulli upon that of the offender.[189] This claim was submitted to the tribal council by the "speaker" of the complainant kinship. He produced his evidence, sometimes even in the shape of paintings, not so much to prove the facts as to sustain his claim. From the opposite side, the "speaker" defended the interests of his clan, and he also supported his pleadings with whatever testimony he might command.[190] The remaining "tlatoca" listened attentively to both parties, and when the argument was concluded, they deliberated among

[189] *H. H. Bancroft* ("*Native Races*," Vol. II, pp. 458 and 459) was the first, to my knowledge, to call attention (in note 59) to the difference of opinion among authors, in regard to the punishment of murderers. He refers to the unpublished parts of the work of Fray *Diego Durán*. We find in the *Codice Ramirez* ("*Tratado de los Ritos y Ceremonias y Dioses que en su Gentilidad usaban los Indios desta Nueva España*," Cap. I, p. 103): "El matar uno á otro era muy prohibido, y aunque no se pagaba con muerte, hazian al homicida esclavo perpétuo de la mujer ò parientes del muerto, para que les sirviesse y supliesse la falta del muerto, ganando el sustento de los hijos que dejaba." This is very interesting since it shows the autonomy of the kins. The murderer stood, towards the calpulli of the slain, in the same relation as, among northern Indians, a prisoner of war did towards the hostile tribe. Both could be adopted, and this condoned the dead. The offending kin lost one member; the offended kin obtained one in return for the one that had been killed. However, this was only in exceptional cases: the rule, as established by the majority of authors was that life alone could atone for life. In the same manner, and under the same head, the contradictory reports must be placed, about the punishment of theft, which have already been noticed. There are consequently, for each crime or kind of crime, two classes; one, of such as were committed within the kin, and the other, of such as were committed without.

[190] *Sahagun* (Lib. VIII, cap. XV, p. 304): "Otra sala del palacio se llamaba teccali, ó teccalco. En este lugar residian los senadores y los ancianos para oir pleitos y peticiones, que les ofrecian la gente popular, y los jueces procuraban de hacer su oficio con mucha prudencia y sagacidad, y presto los despachaban; porque primeramente demandaban la pintura en que estaban escritas ó pintadas las causas, como hacienda, casas, ó maizales; y despues cuando ya se queria acabar el pleito, buscaban los senadores los testigos." I quote this passage, although it applies particularly to the judicial functions of the council, because the mode of proceedings is therein illustrated. *Veytia* (Lib. III, cap. VII, p. 207), speaking of Texcuco, is very positive: "Habia tambien abogados y procuradores; á los primeros llamaban tepantlatoani, que quiere decir *el que habla por otro*. . . . ." I need not recall here that "tlatoani" (plural "tlatoca") was the title of the members of the council, and that consequently these "attorneys" belonged thereto. The same statement (derived from Veytia also) is found in *Bustamante* ("*Texcoco*," Parte II, cap. VII, p. 191). These two works contain (in the chapters indicated) the most detailed information as to the proceedings. Still, there is evident confusion in the minds of these authors in general: they fail to discriminate between arbitration and tribal jurisdiction. The bulk of the other authorities commit the same mistake. Compare *Zurita* ("Rapport," pp. 102-105), whom *Mendieta* (Lib. II, cap. XXVIII, p. 136) has almost verbally copied. *Torquemada* (Lib. XI, cap. XXVI, pp. 354 and 355).

The absolute lack of division of powers which characterizes so well ancient Mexican society is well established by *Veytia* (III, cap. VII, p. 208), speaking of what he

16:Bandelier E-4 (no date) 1880 NU7 Aztec NU7

618 646 695 themselves until they finally agreed upon an award.[191] The same thing occurred when two calpulli claimed possession or enjoyment of the same piece of land.[192] No appeal was possible to any higher authority; but every eighty days an extraordinary gathering took place at the "tecpan," consisting of the council and the executive chieftains, the war-captains of the four great quarters, the "elder brothers" of the kins, and the leading medicine-men, and any cause pending before the "tlatocan" might be deferred until the next of these general meetings; and even in case a decision had been rendered, a reconsideration thereof, on that occasion, was sometimes agreed upon.[193]

calls "supremo consejo:" "Tratábanse en este consejo todo género de negocios de estado, justicia, guerra, hacienda etc., etc."

[191] This picture is mainly based upon *Veytia* ("*Historia antigua*," III. cap. VII), and *Bustamente* ("*Texcoco*," pp. 191 and 192). The statement in the latter is only worthy of credit because copied from the former.

[192] *Veytia* (Lib. III, cap. VII, p. 207). *Clavigero* (Lib. VII. cap. XVI, p. 483). For a copy of the paintings reproduced, see *A. de Humboldt* ("*Vues des Cordillères*," etc., Vol. I, plate V. *Ed.* 8vo).

[643 695] [193] I affirm this in the face of all the authorities on the subject, who, without exception, assert that there was an appeal to the "king." The *Codex Mendoza* (plate LXX, "Declaracion de la figurado") is even very positive: "Y si era negocio de calidad del consejo, havia apelacion por via de agravio ante Montezuma, en donde habia conclusion de la causa." My opinion is based on what precedes about the authority of the council, on what I expect to prove in relation to the true nature of the duties of the head-chiefs and which will hereafter follow, and on the contradictions among the authors themselves. Thus the "*Codice Ramirez*" (p. 58) places the supreme power into the hands of the councils "sin parescer de los quales ninguna cosa se habia de hacer," and (pp. 64 and 65) it does not mention any power of appeal whatever. *Zurita* (pp. 100 and 101): "Les appels étaient portés devant douze autres juges supérieurs qui prononçaient d'apres l'avis du souverain." It is queer to notice, how the writers of the texcucan school, appear eager to place the power of final decree or the decision of final appeal in a "high tribunal," or rather simply a supreme council of their tribe. *Torquemada* (Lib. II, cap. XXXXI, p. 146) mentions a supreme council, "á los quales avian de venir todas las cosas graves, y criminales, para que ellos, con el Rei, las determinassen." (Lib. XI, cap. XXVI, p. 354): "Para estos dos Jueces Supremos se apelaban las causas graves, los quales las admitian, pero no determinaban, ni sentenciaban, sin parecer, y acuerdo de el Rei." *Veytia* (Lib. III, cap. VII, p. 199) speaks of the establishment of "tribunals" by "Fasting wolf" ("Nezahualcoyotl"—properly "fasting coyote"), and adds: "pero concediendo á las partes el recurso de apelacion para el gran tribunal de justicia que erigió en su corte de Texcuco." This so-called tribunal was, as we have shown at the close of note 190, the "Council of the tribe." *Mendieta* (Lib. II, cap. XXVIII, p. 135) almost copies Zurita. *Sahagun* ("*Historia general*," etc., Lib. VIII, cap. XXV, p. 314): "y los casos muy dificultuosos y graves, llevábanlos al señor para que los sentenciase, juntamente con trece principales muy calificados, que con el andaban, y residian." "Estos tales eran los mayores jueces, que ellos llamaban tecutlatoque. . . ." In this case the learned father speaks of tribal jurisdiction and not of arbitration. Still it is plain that he admits the *council's decrees as final*. The chief, "señor," appears only as member of this council, a position of which we shall hereafter speak. Without making any further quotations from similar authorities, I beg to revert to those which place, *by the side of the so-called "King,"* an independent "supreme Judge"—the "Cihuacohuatl," whose tribunal